Calendar No. 950

100TH CONGRESS
2d Session

SENATE

REPORT
100-517

NUCLEAR WASTE POLICY ACT AMENDMENTS OF 1988

SEPTEMBER 16 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources submitted the following

REPORT

[To accompany S. 2800]

The Committee on Energy and Natural Resources, having considered the same, reports favorably an original bill, to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage Commission, and recommends that the bill do pass.

PURPOSE OF THE MEASURE

The purpose of the bill is to amend the Nuclear Waste Policy Act of 1982 with respect to the Office of the Nuclear Waste Negotiator and the Monitored Retrievable Storage (MRS) Commission. The bill would accomplish two purposes. First, it would establish the Office of the Nuclear Waste Negotiator as an independent establishment in the executive branch instead of within the Executive Office of the President. Second, the bill would extend the deadline for submission of the MRS Commission report from June 1, 1989 to November 1, 1989.

BACKGROUND AND NEED

The Nuclear Waste Policy Act of 1982 (NWPA) establishes a national policy and program for safely storing, transporting, and disposing of spent nuclear fuel and high-level radioactive waste. The NWPA makes the Federal Government responsible for the disposal of this fuel and waste and sets forth a schedule for the Department of Energy to carry out a program for the siting, construction, licensing, and operation of a geologic repository. The NWPA provides a role for state and public participation in the planning and

S313-53

development of disposal facilities and a role for other federal agencies in the licensing of such facilities. The NWPA also establishes a nuclear waste fund, to be composed of payments made by generators of spent fuel and high-level waste, from which the costs of the program are paid.

Amendments to the NWPA, enacted in the Nuclear Waste Policy Amendments Act of 1987, authorize the siting, construction, licensing, and operation of a temporary storage facility for spent nuclear fuel, known as monitored retrievable storage (MRS). The 1987 Amendments also establish an MRS Commission to report to Congress by June 1, 1989 on the need for an MRS facility. Upon submission of that report to Congress, the Department of Energy would be authorized to initiate a survey of potentially suitable sites for an MRS.

The 1987 Amendments also establish an Office of the Nuclear Waste Negotiator within the executive branch and directs the President to appoint a Negotiator. The Negotiator's role in the nuclear waste program is to seek a state or Indian tribe willing to host a permanent repository or MRS facility at a suitable site. The Negotiator is authorized to negotiate the terms and conditions (including financial and institutional arrangements) under which the state or tribe would be willing to host a repository or MRS facility. Congress must approve and enact implementing legislation in order for any agreement reached between the Negotiator and a state or tribe to take effect.

The Negotiator's effort to find a state or tribe willing to host a repository or MRS facility are independent of, and would proceed in parallel with, the Department of Energy's efforts to site a repository at Yucca Mountain, Nevada and to site an MRS facility. Accordingly, the Negotiator's charge would include negotiations with the State of Nevada with respect to a repository and negotiations with any state selected by DOE to host an MRS facility.

Implementation of certain provisions of the 1987 Amendments has been slow. This is true of both appointment of the MRS Commission and appointment of the Nuclear Waste Negotiator.

The 1987 Amendments directed that the Commission be appointed within 30 days of enactment or by January 21, 1988, which would have provided the Commission with 16 months to complete its report. The Commission was not fully constituted and sworn into office, however, until June 14, 1988. The statute also provided that the Commission would cease to exist 60 days after the submission of the MRS Commission report. The General Accounting Office has advised the MRS Commission that it reads this statutory sunset provision to mean that the Commission will cease to exist 30 days after June 1, 1989 and that no expenditures will be allowed beyond that date.

A legislative extension of the deadline for submission of the MRS Commission report has, therefore, become necessary. The extension is needed to ensure that sufficient time is available to the MRS Commission to complete the report as envisioned by the 1987 Amendments.

The 1987 Amendments also directed appointment of the Nuclear Waste Negotiator, however no deadline for appointment was included in the legislation. To date, the President has not submitted

any nomination for the Nuclear Waste Negotiator. The stated reason for failing to nominate someone for the position is the Administration's reluctance to establish a new entity within the Executive Office of the President.

There is no need for the Negotiator to be within the Executive Office in order to carry out the intent and spirit of the 1987 Amendments. The function of the Negotiator, and the intent of the 1987 Amendments, can be adequately fulfilled by establishment of the Office of the Nuclear Waste Negotiator as an independent entity in the executive branch. Therefore, transfer of the Office of the Nuclear Waste Negotiator to outside the Executive Office of the President, as accomplished by this bill, is necessary to ensure that the intent and spirit of the 1987 Amendments is fulfilled.

Legislative History

The full Committee held an oversight hearing on the Department of Energy's nuclear waste program and implementation of the Nuclear Waste Policy Amendments Act of 1987 on March 28, 1988. Testimony was received from the Department of Energy and the Nuclear Regulatory Commission.

The Committee met in open business session to consider this legislation, an original bill, on September 14, 1988.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on September 14, 1988, by unanimous vote of a quorum present, recommends that the Senate pass the bill.

The rollcall vote on reporting the measure was 19 yeas and 0 nays as follows:

YEAS	NAYS
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield *	
Mr. Weicker *	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski *	
Mr. Nickles	
Mr. Hecht	
Mr. Evans	

* Indicates vote by proxy.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out the provisions of this bill.

This bill is not a regulatory measure in the sense of imposing federally-established standards or significant economic responsibilities on private individuals or businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact on personal privacy.

Little, if any, additional paperwork would result from the enactment of this bill.

Executive Communications

No executive communications were received with respect to this legislation.

Changes in Existing Law

In compliance with paragraph 12 of rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

The Nuclear Waste Policy Act of 1982

* * * * * * *

MONITORED RETRIEVABLE STORAGE COMMISSION

Sec. 143. (a) Establishment.—(1)(A) There is established a Monitored Retrievable Storage Review Commission (hereinafter in this section referred to as the "MRS Commission"), that shall consist of 3 members who shall be appointed by and serve at the pleasure of the President pro tempore of the Senate and the Speaker of the House of Representatives.

(B)(i) Members of the MRS Commission shall be appointed not later than 30 days after the date of the enactment of the Nuclear Waste Policy Amendments Act of 1987 from among persons who as a result of training, experience and attainments are exceptionally well qualified to evaluate the need for a monitored retrievable storage facility as a part of the Nation's nuclear waste management system.

(C) The MRS Commission shall prepare a report on the need for a monitored retrievable storage facility as a part of a national nu-

clear waste management system that achieves the purposes of this Act. In preparing the report under this subparagraph, the MRS Commission shall—

(i) review the status and adequacy of the Secretary's evaluation of the systems advantages and disadvantages of bringing such a facility into the national nuclear waste disposal system;

(ii) obtain comment and available data on monitored retrievable storage from affected parties, including States containing potentially acceptable sites;

(iii) evaluate the utility of a monitored retrievable storage facility from a technical perspective; and

(iv) make a recommendation to Congress as to whether such a facility should be included in the national nuclear waste management system in order to achieve the purposes of this Act, including meeting needs for packaging and handling of spent nuclear fuel, improving the flexibility of the repository development schedule, and providing temporary storage of spent nuclear fuel accepted for disposal.

(2) In preparing the report and making its recommendation under paragraph (1) the MRS Commission shall compare such a facility to the alternative of at-reactor storage of spent nuclear fuel prior to disposal of such fuel in a repository under the Act. Such comparison shall take into consideration the impact on—

(A) repository design and constructior;

(B) waste package design, fabrication and standardization;

(C) waste preparation;

(D) waste transportation systems;

(E) the reliability of the national system for the disposal of radioactive waste;

(F) the ability of the Secretary to fulfill contractual commitments of the Department under this Act to accept spent nuclear fuel for disposal; and

(G) economic factors, including the impact on the costs likely to be imposed on ratepayers of the Nation's electric utilities for temporary at-reactor storage of spent nuclear fuel prior to final disposal in a repository, as well as the costs likely to be imposed on ratepayers of the Nation's electric utilities in building and operating such a facility.

[(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on June 1, 1989.]

(3) The report under this subsection, together with the recommendation of the MRS Commission, shall be transmitted to Congress on November 1, 1989.

* * * * * * *

[SEC. 402. (a) ESTABLISHMENT.—There is established within the Executive Office of the President the Office of the Nuclear Waste Negotiator.]

SEC. 402. (a) ESTABLISHMENT.—There is established the Office of the Nuclear Waste Negotiator that shall be an independent establishment in the executive branch.

APPENDIX

MONITORED RETRIEVABLE STORAGE
REVIEW COMMISSION,
Washington, DC, September 13, 1988.

Hon. J. BENNETT JOHNSTON,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

DEAR CHAIRMAN JOHNSTON: The purpose of this letter is to request your assistance in obtaining a legislative extension of time for the National Retrievable Storage Review Commission to submit its report to Congress on whether a monitored retrievable storage facility should be included in the national nuclear waste management system. The Nuclear Waste Policy Amendments Act of 1987 (Public Law 100-203) requires that the Monitored Retrievable Storage Review Commission report to Congress by June 1, 1989. The Commission has begun its work and it now appears clear that the Commission will not be able to complete the report by June 1, 1989.

As you know, the statute, which was signed into law on December 22, 1987, directed that the Commission be appointed within thirty days of enactment of the amendments. Unfortunately, the Commission was not fully constituted and sworn into office until June 14, 1988. The Commission therefore lost more than four months of the time contemplated by the statute for preparation of its report.

The statute also provided that the Commission will cease to exist sixty days after the submission to Congress of the report. As the Commission originally construed the statute, this provision could be read to mean that Congress recognized that the report might be late and intended to provide some flexibility with regard to completion of the Commission's work. The Commission intended simply to advise the Congress that it needed more time to prepare the report because of the delay in establishing the Commission. However, we have obtained a copy of a decision by the Comptroller General of the United States construing a similar statutory provision creating the Commission on Postal Service in 1976 which leads us to conclude that a legislative extension is required. A copy of that decision is attached and the General Accounting Office has informed us that this decision is still controlling.

Accordingly, the Commission respectfully requests your assistance in obtaining a legislative extension to allow the Commission to submit its report by November 1, 1989 and to terminate its activities within sixty days thereafter. The Commission will be

pleased to provide any assistance to your staff that would facilitate this effort.

Sincerely,

ALEX RADIN, *Chairman.*
FRANK L. PARKER, *Commissioner.*
DALE E. KLEIN, *Commissioner.*

○

Calendar No. 951

100TH CONGRESS
2d Session

SENATE

REPORT
100-518

BESSEMER DITCH NEAR PUEBLO, COLORADO

SEPTEMBER 16 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

[To accompany S. 2748]

The Committee on Energy and Natural Resources, to which was referred the bill (S. 2748) to extend the authorization in Public Law 96-309 to design and construct a gunite lining on certain reaches of the Bessemer Ditch in the vicinity of Pueblo, Colorado, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

That the act of July 9, 1980, (Public Law 96-309, 94 Stat. 940) is hereby amended by adding a section 4 as follows:

"SEC. 4. The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices) plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: *Provided*, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total costs of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the design and construction at cost of the additional gunite lining authorized by this section."

PURPOSE

The purpose of S. 2748 is to authorize the Secretary of the Interior to design and construct approximately 11,000 feet of gunite

S313-54

lining of the Bessemer Ditch irrigation canal near Pueblo, Colorado.

Background

The Bessemer Ditch is owned and operated by the Bessemer Irrigation Ditch Company, a nonprofit company owned by water users in the ditch service area. The ditch is 42 miles long and provides irrigation water to approximately 20,00 acres. A 10-mile portion of the ditch passes through residential areas of Pueblo, Colorado,

Construction of Pueblo Dam (a feature of the Fryingpan-Arkansas Project) required acquisition of the upper 5.3 miles of the Bessemer Ditch, along with the diversion structure which diverted flows of the Arkansas River into the ditch. Water for the company is not released to the Bessemer Ditch from the reservoir behind Pueblo Dam through a separate outlet at the Dam. As a result, what has been previously silt laden flows were now clear and the silt which ordinarily helped reduce the permeability of the canal walls is absent with a subsequent water loss.

In the 96th Congress, legislation was enacted (Public Law 96–309) authorizing the Secretary of the Interior to line approximately 8,000 feet of the canal in the vicinity of Pueblo to reduce the seepage. That work has been completed, but has proven inadequate to prevent continued problems resulting from the remaining unlined portions of the canal and a correspondingly high water table. The high water table continues to cause residential flooding in the Pueblo area. The only viable solution is to authorize the lining of an additional segment of the canal to prevent further flooding.

Legislative History

S. 2748 was introduced on August 11, 1988 by Senator Armstrong and was referred to the Committee on Energy and Natural Resources. On August 22, 1988, the Committee on Energy and Natural Resources requested legislative reports on S. 2748 from the Department of the Interior and the Office of Management and Budget.

At the business meeting on Wednesday, September 14, 1988, the Committee on Energy and Natural Resources ordered S. 2748 to be reported with an amendment in the nature of a substitute.

Committee Recommendation and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on September 14, 1988, by unanimous vote of a quorum present recommends that the Senate pass S. 2748, if amended as described herein.

The rollcall vote on reporting the measure was 19 yeas, 0 nays as follows:

Yeas	Nays
Mr. Johnston	
Mr. Bumpers	
Mr. Ford	
Mr. Metzenbaum	
Mr. Melcher	
Mr. Bradley	
Mr. Bingaman	
Mr. Wirth	
Mr. Fowler	
Mr. Conrad	
Mr. McClure	
Mr. Hatfield [1]	
Mr. Weicker [1]	
Mr. Domenici	
Mr. Wallop	
Mr. Murkowski [1]	
Mr. Hecht	
Mr. Nickles	
Mr. Evans	

[1] Indicates vote proxy.

Committee Amendment

The Committee adopted an amendment to S. 2748 in the nature of a substitute. The amendment conforms the text of S. 2748 to that of the Act (Public Law 96-309) being amended. The amendment also clarifies the nature and amount of the non-Federal contribution by allowing in kind contributions as well as cash; which contribution must contribute an amount equal to 22 per centum of the total costs of the design and construction of the gunite lining authorized by S. 2748.

Section 2 of Public Law 96-309 requires that the design and construction costs of the works authorized by the Act (which will include the costs of the additional gunite lining authorized by S. 2748) be included as capitol costs of Pueblo Dam and reservoir and that the costs be allocated to the purposes served by Pueblo Dam and reservoir in accordance with the procedures established pursuant to Federal Reclamation law. The amendment clarifies that the amount of the non-Federal contribution shall not be included in the amount of the design and construction costs allocated pursuant to section 2 of Public Law 96-309.

Finally, the amendment authorizes the Secretary of the Interior to contract with the Bessemer Irrigation Ditch Company for the installation, at cost, of the additional gunite lining authorized by S. 2748. The Secretary of the Interior contracted with the Company for the work authorized by Public Law 96-309. The Company successfully performed a portion of the work and subcontracted the rest. The Company has the personnel and equipment at hand to begin work on the additional lining authorized by S. 2748. In order to install the gunite lining, the canal must be dewatered. The only time to install the lining while not interrupting water service would be during the late fall and winter months when the canal is dewatered during the non-irrigation season. It is hoped that by spe-

cifically authorizing the Secretary to contract with the Ditch Company, construction may be initiated and comleted during the 1988–89 construction season.

Cost and Budgetary Considerations

The Congressional Budget Office estimate of the costs of this measure has been requested but was not received at the time the report was filed. When the report is available, the Chairman will request it to be printed in the Congressional Record for the advice of the Senate.

Regulatory Impact Evaluation

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out S. 2748. The bill is not a regulatory measure in the sense of imposing Government-established standards. Enactment of S. 2748 would impose significant economic responsibilities on individuals or other non-Federal entities by requiring a non-Federal contribution towards the costs of the project and the repayment of capitol costs pursuant to existing law.

No personal information would be collected in carrying out the action authorized by S. 2748. Therefore, there would be no impact on personal privacy.

Other than the normal paperwork resulting from contracting for and construction of the type of work authorized by S. 2748, little, if any, additional paperwork would result from the enactment of S. 2748 as reported.

Executive Communications

On August 22, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on S. 2748. These reports had not been received in time for inclusion in this report. When the reports become available, the Chairman will request that they be printed in the Congressional Record for the advice of the Senate.

Changes in Existing Law

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the bill, S. 2748, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new mater is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF JULY 9, 1980

(Public Law 96-309, 94 Stat. 940)

To authorize the Secretary of the Interior to design and construct a gunite lining on certain reaches of the Bessemer Ditch in the vicinity of Pueblo, Colorado, to prevent or reduce seepage damage on adjacent propoerties, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Secretary of the Interior is authorized to design and construct a gunite lining on approximately eight thousand feet of the Bessemer Ditch in the vicinity of Pueblo, Colorado, to prevent or reduce seepage damage on adjacent properties. Nothing in this Act shall be construed in any administrative or judicial proceeding as establishing congressional acquiesence or approval of any theory of Federal liability for damages or as establishing a precedent for Federal liability or responsibility in any situation similar to that addressed by this Act.

SEC. 2. The design and construction costs of the works authorized by this Act shall be included as capital costs of Pueblo Dam and Reservoir, Fryingpan-Arkansas Project, Colorado, and shall be allocated to the purposes served by Pueblo Dam and Reservoir in accordance with procedures established pursuant to Federal Reclamation Law. The Bessemer Irrigating Ditch Company, which owns, operates, and maintains the Bessemer Ditch, shall be responsible for maintaining or replacing the completed gunite lining authorized by this Act.

SEC. 3. There is hereby authorized to be appropriated for fiscal year 1981 for the design and construction of approximately eight thousand feet of gunite lining on the Bessemer Ditch in the vicinity of Pueblo, Colorado, the sum of $1,500,000 (based on October 1979 prices), plus or minus such amounts, if any, as may by justified by reason of changes of construction costs as indicated by engineering cost indices applicable to the type of construction involved.

SEC. 4. The Secretary is hereby authorized to undertake the design and construction of approximately 11,000 feet of gunite lining of the Bessemer Ditch in addition to that lining which was constructed pursuant to section 1 of this Act. There is hereby authorized to be appropriated as the Federal share of costs for the purpose of this section the sum of $1,170,000 (based on August 1988 prices), plus or minus such amounts, if any, as may be justified by reason of changes in construction cost indices applicable to the type of construction involved: Provided, That non-Federal interests shall contribute during construction of the additional gunite lining an amount equal to 22 per centum of the total costs of the design and construction of such additional lining. The non-Federal contribution may include cash and in kind contributions and shall not be subject to the conditions of section 2 of this Act. The Secretary is authorized to contract with the Bessemer Irrigation Ditch Company for the design and construction at cost of the additional gunite lining authorized by this section.

○

Calendar No. 953

100TH CONGRESS
2d Session

SENATE

REPORT
100-520

MANASSAS NATIONAL BATTLEFIELD PARK AMENDMENTS OF 1988

SEPTEMBER 20 (legislative day, SEPTEMBER 7), 1988.—Ordered to be printed

---

Mr. JOHNSTON, from the Committee on Energy and Natural Resources, submitted the following

REPORT

together with

MINORITY VIEWS

[To accompany H.R. 4526]

The Committee on Energy and Natural Resources, to which was referred the Act (H.R. 4526) to provide for the addition of approximately 600 acres to the Manassas National Battlefield Park, having considered the same, reports favorably thereon with an amendment and recommends that the Act, as amended, do pass.

The amendment is as follows:

On page 2, strike the second sentence of paragraph (B), and insert the following:

> Payment shall be in the amount of the agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304.

PURPOSE OF THE MEASURE

The purpose of H.R. 4526, as ordered reported, is to provide for the addition of approximately 600 acres to the Manassas National Battlefield Park to protect significant historical resources of the Second Battle of Manassas.

S313-55

Background and Need

Manassas National Battlefield Park, designated in 1940, preserves and interprets the battlefield where two major Civil War battles—both Confederate victories—were fought, First Manassas (July 1861) and Second Manassas (August 28–30, 1862). The Battle of Second Manassas (or, Second Bull Run) brought the Confederacy to the height of its power. Lee's bold and brilliant Second Manassas campaign opened the way for the South's first invasion of the North, and a bid for foreign intervention. In nine weeks, Lee, as commander of the Army of Northern Virginia, managed to drive the vastly stronger Union army from threatening Richmond, the Confederacy's capital, to defending Washington, D.C., the Union's capital. Determined to defeat Union General John Pope before he could unite with General George McClellan, Lee and his out-numbered army used daring strategy, hard marches, bold tactics and inspired leadership to defeat Pope and force his retreat to Washington.

Lee's headquarters, from which he directed the battle, was located on Stuart's Hill, now part of the William Center Tract immediately adjacent to Manassas National Battlefield Park. The Tract was also the staging area for Longstreet's decisive attack on the Union. On the evening of the 29th, Longstreet's forces returned to what is now the William Center tract from a forced reconnaissance against Pope. The configuration of the William Center tract's terrain hid Longstreet's forces from Union officers, fooling General Pope into thinking the Confederates had retreated and causing him to misjudge Longstreet's strength. The next morning when Pope ordered his troops forward in pursuit of the Confederates, he was defeated and forced into retreat himself as Longstreet's forces stormed eastward from staging areas on the William Center Tract and attacked him.

In 1986, the Prince William County Board of Supervisors considered a proposal to construct a mixed residential/nonresidential development on the William Center tract. The Superintendent of Manassas National Battlefield Park worked with the county and the developer to mitigate effects on the park and on the resources. In January 1988, the developer announced his intention to construct a 1.2 million square foot shopping mall, major office space and residential development on the site. The National Park Service, historic preservationists, civil war scholars, and others objected that the proposed mall could destroy the historic integrity of the parcel.

H.R. 4526 would add these lands to the park and preclude the proposed development.

Legislative History

H.R. 4526 passed the House of Representatives on August 10, 1988 by a vote of 307 to 98. A hearing was held on this measure by the Subcommittee on Public Lands, National Parks and Forests on September 8, 1988.

At the business meeting on Thursday 15, 1988, the Senate Committee on Energy and Natural Resources ordered H.R. 4526, as amended, favorably reported.

Committee Recommendations and Tabulation of Votes

The Senate Committee on Energy and Natural Resources, in open business session on Thursday, September 15, 1988, by a majority vote of a quorum present, recommends that the Senate pass H.R. 4526 if amended, as described herein.

The rollcall vote on reporting the measure was 11 yeas, 8 nays, as follows:

YEAS	NAYS
Mr. Johnston	Mr. Conrad
Mr. Bumpers	Mr. McClure
Mr. Ford	Mr. Domenici
Mr. Metzenbaum*	Mr. Wallop
Mr. Melcher	Mr. Murkowski*
Mr. Bradley*	Mr. Nickles*
Mr. Bingaman*	Mr. Hecht*
Mr. Wirth	Mr. Evans
Mr. Fowler	
Mr. Hatfield	
Mr. Weicker*	

* Indicates voted by proxy.

Committee Amendments

During the consideration of H.R. 4526, the Committee adopted one amendment. This amendment provides that any payments resulting from the taking of the William Center property will be derived from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304.

The language in the House-passed bill could have been interpreted as authorizing or requiring appropriated but unobligated advances from the Land and Water Conservation Fund to be used to pay for all or a portion of the property.

The Committee amended the House bill to remove this ambiguity. The Committee emphasizes that the permanent judgment appropriation is the appropriate funding source for the acquisition provided for in this Act and that Land and Water Conservation Fund monies are not to be used for this purpose.

Section-by-Section Analysis

Section 1 provides that this Act may be cited as the Manassas National Battlefield Park Amendments of 1988.

Section 2 amends the Act of April 17, 1954 by adding a new section to the original act. The section specifies the boundaries of the approximately 600 acre addition (hereinafter referred to as the "Addition"), acquires the Addition by legislative taking, directs the United States to pay just compensation to the owners of the Addition and directs the United States to pay the amount of the agreed negotiated value of the Addition or its value as awarded by judgment from the permanent judgment appropriation. This section also allows the Secretary to initiate a court proceding to determine just compensation for the taking of the addition, directs the Secretary to publish a detailed description and map depicting the bound-

aries within 6 months after enactment and forbids the Secretary from allowing any unauthorized use of the Addition after enactment except for the orderly termination of all operations on the Addition and removal of equipment, facilities and personal property.

Section 3 amends Section 2(a) of the Act of April 17, 1954 by adding a new section directing the Secretary to work with the state and local governments to encourage preservation of the scenic viewshed of the battlefield through zoning and such other means as the parties determine feasible.

Section 4(a) directs the Secretary to conduct a study with the Federal Highway Administration, the Commonwealth and Prince William County regarding Highways 29 and 234 in, and in the vicinity of, the battlefield. The study shall assess available alternatives and specifically consider and develop plans for the closure of those roads through the battlefield and the determination of alternative routes.

Section 4(b) specifies that the study shall be completed within one year after the date of enactment and shall determine when and how highways 29 and 234 should be closed.

Section 4(c) authorizes the Secretary to provide funds for the construction and improvement of those highways to be used for the rerouting of traffic now utilizing highways 29 and 234 if such construction and improvement were determined by the Secretary to protect the integrity of the park. Section 4(c) specifies that no more than 75 percent of the costs of road relocations shall be provided by the Secretary and that at least 25 percent shall be provided by State or local government. Such construction and improvement shall be approved by the Secretary of Transportation.

Section 4(d) authorizes appropriations not to exceed $30 million (less the expense of the study) for the highway construction and improvements.

Cost and Budgetary Considerations

The following estimate of the cost of this measure has been provided by the Congressional Budget Office.

U.S. Congress,
Congressional Budget Office,
Washington, DC, September 19, 1988.

Hon. Bennett Johnston, Jr.,
Chairman, Committee on Energy and Natural Resources,
U.S. Senate, Washington, DC.

Dear Mr. Chairman: The Congressional Budget Office has reviewed H.R. 4526, the Manassas National Battlefield Park Amendments of 1988, as ordered reported by the Senate Committee on Energy and Natural Resources, September 15, 1988. Enactment of this bill would result in significant federal costs, but the timing and amount of such expenditures cannot be determined with any precision at this time.

H.R. 4526 would expand the boundaries of the Manassas National Battlefield Park in Virginia to incorporate an additional 500–600 acres and would transfer ownership of the additional acreage to

the United States. Under the provisions of Section 2 of the bill, the federal government would compensate the current owners of this land for this "legislative taking" from the Treasury's permanent judgment appropriation. The amount of such compensation, including interest, would be determined by negotiation or by the courts, and thus cannot be estimated at this time. The current assessed value of the property is $13 million, but the negotiated or awarded payment may be significantly greater.

Section 4 of the bill would direct the Secretary of the Interior to conduct a study on the possible relocation of two highways in the vicinity of the park. If, upon the completion of the one-year study, the Secretary deems such relocation to be desirable, he would be authorized to provide up to 75 percent of the necessary construction costs to Virginia. The bill would authorize the appropriation of up to $30 million for the study and any payment made to the state under this section. Relocation of the highways is expected to cost at least $30 million to $40 million and could cost significantly more depending on the bypass route that is chosen. Therefore, if the Secretary decides on relocation and if the necessary sums are appropriated, it is likely that the full $30 million sums are appropriated, it is likely that the full $30 million would be spent. If a lump-sum payment is made by the Secretary, this amount could be expended as early as fiscal year 1990.

If the two roads are relocated, the Commonwealth of Virginia would be responsible for 25 percent of the construction costs, or any amount over the $30 million authorized federal share. State authorities estimate the cost of the road construction work at about $100 million because they believe that it will be necessary to widen I-66 as a result of the additional traffic routed to it. If the state decides that this is necessary, it would spend a total of about $70 million. It is possible that Virginia may choose to use some of the funds apportioned to it under the federal-aid highways program for this purpose.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Michael Sieverts, who can be reached at 226-2860.

Sincerely,

JAMES L. BLUM,
Acting Director.

REGULATORY IMPACT EVALUATION

In compliance with paragraph 11(b) of Rule XXVI of the Standing Rules of the Senate, the Committee makes the following evaluation of the regulatory impact which would be incurred in carrying out H.R. 4526. The Act is not a regulatory measure in the sense of imposing Government-established standards or significant economic responsibilities on private individuals and businesses.

No personal information would be collected in administering the program. Therefore, there would be no impact of personal privacy.

Little, if any, additional paperwork would result from the enactment of H.R. 4526, as reported.

EXECUTIVE COMMUNICATIONS

On August 19, 1988, the Committee on Energy and Natural Resources requested legislative reports from the Department of the Interior and the Office of Management and Budget setting forth executive views on H.R. 4526. These reports had not been received at the time the report on H.R. 4526 was filed. When the reports become available, the chairman will request that they be printed in the Congressional Record for the advice of the Senate. The testimony provided by the appropriate agency at the Subcommittee hearing follows:

STATEMENT OF DONALD PAUL HODEL, SECRETARY OF THE INTERIOR, BEFORE THE SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS, SENATE COMMITTEE ON ENERGY AND NATURAL RESOURCES, CONCERNING H.R. 4526, THE "MANASSAS NATIONAL BATTLEFIELD PARK AMENDMENTS OF 1988."

September 8, 1988

Mr. Chairman and members of the Committee, it is a pleasure to be here today to discuss the efforts to protect the Manassas National Battlefield Park and present our views on H.R. 4526.

We oppose enactment of H.R. 4526. If the bill is presented to the President in its current form, I would recommend that he veto it.

Manassas National Battlefield Park is one of our Nation's premier areas dedicated to commemorating the Civil War. The issue facing us today, Mr. Chairman, is not if we are going to protect the Manassas battlefield for this and future generations. Rather, the question is how we are going to protect it from the real threats to its integrity.

I have personally spent much time considering this issue, visiting the park, and consulting with top professionals on protection of the historic area. It is clear to me, and to National Park Service Director Mott, that the most important threat to Manassas is heavy non-park related traffic within the park. It is a threat now, and will become a greater threat in the foreseeable future as commuters, trucks, and

commercial vehicles increase their use of the two main roads through the park. The problem is bound to grow as more and more development takes place west of the battlefield.

Development on adjacent lands away from the battlefield, outside the park boundary, is also of concern, but properly handled it need not be a threat. In the case of the William Center tract, we propose the developer use buffers, screening vegetation, and height restrictions, in combination with relocation of the proposed shopping mall on the tract, in order to provide protection for the park. Such modifications would render proposed mall development almost invisible from the park, and show clearly that outside growth is not necessarily incompatible with park purposes. Legislation to acquire this property, such as H.R. 4526, is unnecessary for protection and enhancement of the park resource.

Therefore, the keys to ensuring that the park is protected from present and future threats are:

1. Eliminate through traffic on Routes 29 and 234 and pass control of these roads to the National Park Service for eventual use to serve park visitors;

2. Establish a procedure with Prince William County that will allow the National Park Service to work with

the County to determine compatible development adjacent to the park; and

3. Reach agreement with the owners of the William Center tract on buffers, screening, height limitations, mall location, and dedication of historically significant land on the Stuart's Hill portion of the tract for permanent protection and historical interpretation.

These elements lie at the heart of the proposal put forward by myself and Director Mott in April of this year. We want to support a continuing effort to remove the traffic and guarantee protection for the park in this rapidly growing area.

We must do so, however, in a manner that is fiscally sound and without the Federal Government running roughshod over local government or pursuing policies that provide windfalls to private parties at taxpayer expense. There are many privately owned tracts surrounding this park unit. If we begin acquiring each piece of private property as it is about to be developed, where will it all end? How far will we be forced to extend park boundaries to assure protection of our resources? We believe it is far better to set up a pattern of cooperation now, and set a standard we can follow in the future.

Mr. Chairman, as a general matter, boundary expansion to protect parks, such as that proposed in H.R. 4526, has an inherent problem. No matter where a boundary is located, there will always be those who say there is something significant just outside that must be made part of the park. There will always be those who say this or that external activity is a threat to the park, and expansion is the only way to extinguish the threat. The fallacy of this approach is, we believe, that boundary expansion simply substitutes one set of external activities for another. Nowhere is this better illustrated than at Manassas.

Congress last expanded the boundary of Manassas in 1980, indicating at the time that it would do so no more. At that time, the Congress decided not to include the William Center tract. We are advised that there are over 3,100 privately owned, developable acres within a mile of the current boundary with a per-acre value of $30,000 to $100,000. H.R. 4526 contains a boundary expansion addressing just 600 of these acres and totally ignores other historically valuable land. Given recent history, should the county and the private sector expect that the Congress will return again and again seeking to take private land -- disregarding both the wishes of locally elected officials as well as previous congressional action -- every time someone obtains media attention?

If the William Center tract should be acquired with the road problem unsolved, what would prevent construction of a regional shopping mall on some other nearby tract? By what routes would the drastically increased traffic move to and from this relocated mall? You may be sure that much of it would flow along Routes 29 and 234. The predictable results would be reduced visitor enjoyment and safety, and a clamor to widen or otherwise modify these roads. As you know, Mr. Chairman, the roads themselves are vital parts of the story of both battles at Manassas, and we do not want to see their historical integrity further diminished.

H.R. 4526 uses a legislative taking of the William Center tract despite the fact that there is no evidence that such drastic and costly action is necessary to protect the park. Quite to the contrary, such action would sacrifice our best opportunity to address the real threat to the park -- traffic -- while providing a huge windfall to a local developer at taxpayer expense.

What is particularly vexing about H.R. 4526 is that its legislative taking provision could cost between $50 and $100 million at a minimum -- moneys that would be much better spent elsewhere. Moreover, our experience with legislative

and other takings of private land is that it almost always costs us more than preliminary estimates. This has been particularly true at Redwoods National Park.

Furthermore, we have been advised by the Office of Management and Budget that, based on its review as well as GAO rules, we'll have to "take the hit" for this whole amount from our allotment under the Land and Water Conservation Fund. An analysis of the fiscal impact of H.R. 4526 is attached to my statement for your records. The cost of this one tract alone would exceed the $41 million appropriated by the Congress in fiscal year 1988 for NPS land acquisition throughout the country. This means that NPS land acquisition nationwide would come to virtual standstill. Many planned priority acquisitions would be significantly delayed or dropped in favor of this one tract -- other important areas such as those in West Virginia, New Mexico, Georgia, New Jersey, Wyoming, Washington, Alaska, and California.

Under our approach, however, the park will be protected from the real threats facing it, problems of traffic and visual intrusion. Moreover, the county and its citizens will still benefit from an estimated $20 million in annual tax revenue from the proposed development; regional commuters will

obtain badly needed, upgraded roads; and the American taxpayer will not underwrite a multimillion dollar windfall to a local developer caused by the precipitous taking of private land by the Federal Government.

Mr. Chairman, we will not be able to get traffic out of the park until alternate routes are available. One such route is the 234 bypass west of the park. This bypass has been supported by the National Park Service for more than a decade. Moreover, its importance to the protection of Manassas was recognized by Congress in its 1980 park expansion, when it specifically provided for the use of this park land for the building of the bypass. This is not a new issue. If current efforts within the Congress to prevent the building of this bypass are successful, it will mean that the Congress has reversed itself, ignored the National Park Service, and foregone its best opportunity to protect this outstanding unit of the National Park System.

Early estimates suggest that building the 234 bypass north of I-66 and widening I-66 adjacent to the park would cost about $62 million. Because we believe these actions are inevitable in any case and would be funded via existing mechanisms for financing highway improvements rather than any special appropriation, their costs should not be attributed to our proposal.

Furthermore, you should know that there have been a series of meetings recently during which all the principal parties who would be signatories to agreements implementing our proposals -- the Commonwealth of Virginia, Prince William County, and the developer -- have agreed our solution is realistic and can be put into effect. Negotiations on these agreements are beginning, and we will certainly keep you advised on their progress.

Mr. Chairman, in recent days, I have been quietly observing the uses at Manassas.

I went to a high point within the park on the Brawner Farm tract and looked back to the disputed William Center tract, and I was stunned to see that the view was already compromised by highly visible and intrusive electrical transmission lines. The long view from Stuart's Hill over the battlefield is not pristine -- it too is compromised by these same transmission lines and streams of traffic on Route 29. The view from Stuart's Hill that we're so intent on preserving under this bill doesn't exist -- and acquiring the William Center tract will not make it any better.

I also heard the growling trucks full of gravel, cement and lumber, shifting gears on Route 29 and clogging the road. Commuters crowded in, attempting to pass, filling in the gaps. I pity anyone who wants to take in the historical

sites or markers on this route -- the press of traffic is so discouraging and, in fact, frightening. NPS Chief Historian Ed Bearss informed me that this is the most difficult Civil War battlefield to visit and interpret, because of the traffic.

I am more convinced than ever that the resolution Director Mott and I proposed earlier this year is the correct one.

I urge you, Mr. Chairman, to work with us and back us in our proposed solution, and thereby guarantee the real protection of Manassas National Battlefield Park.

Thank you. I would be pleased to respond to any questions you may have.

FISCAL IMPACT OF THE TAKING REQUIRED BY H.R. 4526

Summary

- As currently drafted, H.R. 4526 (requiring a legislative taking of certain private property near Manassas Battlefield in Virginia) would automatically be financed from the Land and Water Conservation Fund. Treasury's Claims and Judgments appropriation account would not be available for this purpose.

- The bill's FY 1989 impact would add tens of millions of dollars to the projected Federal deficit, and further exacerbate the problem of meeting Gramm-Rudman-Hollings deficit reduction targets.

Discussion

H.R. 4526 would mandate a legislative taking of private property adjacent to the Manassas National Battlefield Park in Virginia, in order to prevent construction of a shopping mall on the site. Questions have been raised regarding the cost of compensating the current landowner, and how this compensation would be financed. There is also concern about the potential impact of the bill on efforts to reach deficit reduction targets mandated by the Balanced Budget and Emergency Deficit Control (Gramm-Rudman-Hollings) Act.

The cost of compensating the owner of the Manassas property for the legislative taking required by H.R. 4526 will depend, at least in part, on a determination of the fair market value of the land. To date, no appraisal has been performed that recognizes both the property's full development potential under current zoning, and the improvements recently put in place by the landowner. In the absence of such an appraisal, estimates of the property's value have ranged from $13 million to $200 million. At this time, the Interior Department's best estimate is that the property is worth $50-$70 million. For purposes of evaluating H.R. 4526, the Office of Management and Budget is currently assuming the taking required by the bill would place a minimum $60 million compensation obligation on the Federal Government.

With respect to how compensation would be financed, H.R. 4526 states that payment for the property, whether the amount is determined by negotiation or litigation, "shall be made by the Secretary" -- a reference to the Secretary of the Interior. However, H.R. 4526 does not explicitly authorize appropriations to the Interior Department for this purpose.

In fact, no such explicit authorization is required. There is adequate authority in current law for the Secretary to pay for the Manassas property with funds appropriated for National Park Service land acquisition pursuant to the Land and Water Conservation Fund Act of 1965, as amended (16 U.S.C. 460l-4-11). In particular, 16 U.S.C. 460l-9(a) provides that monies appropriated from the Land and Water Conservation Fund for Federal purposes "shall, unless otherwise allotted in the appropriation Act making them available, be allotted by the President" for purposes including the acquisition of land within the authorized boundaries of National Park System units.

Proponents of H.R. 4526 have asserted that payment for the Manassas tract could be derived from the Treasury Department's permanent, indefinite appropriation account entitled "Claims, Judgments, and Relief Acts." The purpose of this fund is to finance, from the general funds of the Treasury, payments of claims against the U.S. that are "not otherwise provided for" (31 U.S.C. 724a).

As a general matter, however, the "Claims, Judgments, and Relief Acts" appropriation is not available for land condemnation judgments. This is the opinion of the General Accounting Office (GAO), which certifies payments from the fund. GAO has stated that "while appropriations for land acquisition may not refer specifically to judgments, they are available for acquisition by purchase or condemnation, and condemnation necessarily contemplates litigation. . . . They are therefore otherwise provided for within the meaning of 31 U.S.C. 724a, and this is not affected by the fact that the appropriation in a given case may have been exhausted." (General Accounting Office, Office of General Counsel, Principles of Federal Appropriations Law, June 1982, p. 12-19.)

Given this general principle, the payment to acquire the Manassas property, if taken by the Federal Government as currently provided for in H.R. 4526, would necessarily be derived from amounts appropriated to the National Park Service from the Land and Water Conservation Fund for land acquisition. The unobligated balance of such funds

currently available to the Park Service is about $74 million. Also, the conference version of the FY 1989 Interior appropriations bill provides $73 million in new budget authority for Park Service land acquisition. In the absence of any bill language preventing the use of these monies for acquiring the Manassas property, a portion of these funds will have to be allocated to that purpose in the event H.R. 4526 is enacted into law in its present form.

Of course, H.R. 4526 could be amended to provide that, notwithstanding any other law, payment for the Manassas property must be derived from Treasury's claims fund. However, to do so would directly violate terms of the Bipartisan Budget Agreement (BBA) between the President and the Joint Leadership of the Congress. The BBA included specific outlines of reconciliation controls for direct spending (i.e., non-appropriated spending, such as that from the claims fund) covering both FY 1988 and FY 1989. Any net additional direct spending beyond the amounts agreed to in the BBA violates the agreement. Payment from the claims fund of the Federal obligation created by the taking in H.R. 4526 would be a form of direct spending that was not agreed to in the BBA.

Whether funded by appropriations from the Land and Water Conservation Fund or by increased spending from the claims fund, any payment to compensate the taking of the Manassas property would be considered "on budget" and would figure in calculation of the Federal budget deficit. There is no authority or rationale for not including such spending in budget totals. Thus, enactment of H.R. 4526 clearly would exacerbate the difficulty of meeting deficit reduction targets mandated by the Gramm-Rudman-Hollings Act.

The magnitude of H.R. 4526's deficit impact depends not only on the amount of compensation due the Manassas landowner, but also on how the taking is paid for. If the bill is not amended, and the taking is paid for with funds appropriated from the Land and Water Conservation Fund, the effect will be to change the use of funds that would have been spent otherwise.

However, funds appropriated for land acquisition are normally outlayed slowly, on a multi-year basis, whereas a large part of the Manassas payment probably would be made before the end of FY 1989. (H.R. 4526 contemplates reaching a negotiated settlement or commencing litigation with the landowner within one year of enactment; if litigation occurs, the U.S. is likely to deposit the estimated fair market value of the property with the court at the outset, to prevent accumulation of interest on the U.S.'s liability.) Thus, there would be a short-term increase in Federal outlays over what would be spent if H.R. 4526 were not enacted.

As an illustration, assume the required payment for the taken property was $60 million, and the funding source was budget authority appropriated from the Land and Water Conservation Fund in FY 1989 for National Park Service land acquisition. The payment would cause $60 million of this budget authority to be outlayed in FY 1989. In contrast, if H.R. 4526 were not enacted, the budget would assume only $21 million in outlays from the same $60 million in budget authority, based on the normal 35 percent first-year spendout rate for Park Service land acquisition budget authority. The net impact of enacting the bill in this example would be to increase estimated FY 1989 outlays -- and the FY 1989 deficit estimate -- by $39 million.

Paying for the Manassas property from the Treasury's claims fund would increase the Federal deficit by the full amount of the required payment. This is because the necessary funding would not be diverted from any other purpose, and no other Federal spending would be foregone. Assuming once again that the required payment for the taken property was $60 million, the net impact of enacting H.R. 4526 simply would be to increase estimated FY 1989 outlays by $60 million.

On August 25th, the Office of Management and Budget issued the Initial Sequester Report to the President and Congress required by the Gramm-Rudman-Hollings Act. The budget estimates contained in that report were based on laws and regulations in effect on August 15, 1988. The report concluded that no sequester will be required for FY 1989, provided that legislation enacted and final regulations promulgated between August 15th and October 15th do not increase the FY 1989 baseline deficit estimate by more than $2.0 billion (or $0.7 billion, after including estimates of legislation that had passed Congress but had not been signed by the President as of the August 15th snapshot date). Should this narrow margin be exceeded, a sequester sufficient to reduce FY 1989 outlays by at least $10 billion will be indicated in the October 15th Final Sequester Report.

The enactment of H.R. 4526 would move the Federal Government one step closer to such a sequester. As explained above, the step would be sizable. This is a reality Congress must face.

DEPARTMENT OF THE ARMY

COMPLETE STATEMENT

OF

COLONEL JOSEPH J. THOMAS

NORFOLK DISTRICT ENGINEER

U.S. ARMY CORPS OF ENGINEERS

BEFORE THE

COMMITTEE ON ENERGY AND NATURAL RESOURCES

SUBCOMMITTEE ON PUBLIC LANDS, NATIONAL PARKS AND FORESTS

UNITED STATES SENATE

ON

H.R. 4526

TO ACQUIRE

ADDITIONAL LAND FOR THE MANASSAS NATIONAL BATTLEFIELD PARK

SEPTEMBER 8, 1988

Senator Bumpers, Subcommittee members, ladies and gentlemen, I am Colonel Joe Thomas, Commander, U. S. Army Corps of Engineers, Norfolk District. This is my technical assistant Ms. Julie Steele, Chief, Waterways Inspection Section in Norfolk. Today I

will address the Corps Regulatory program and our involvement with the Williams Center tract in Manassas, Virginia.

The 1972 amendments to the Federal Water Pollution Control Act, further amended in 1977 and now known as the "Clean Water Act", gave what is commonly called Section 404 authority to the Department of the Army. The Secretary of the Army, acting through the Chief of Engineers is authorized to issue permits for the discharge of dredge or fill material into Waters of the United States pursuant to Section 404 of the Clean Water Act. Waters of the United States are defined as encompassing navigable waters plus their tributaries, adjacent wetlands and isolated waters where the use, degradation or destruction of such waters could affect interstate or foreign commerce. This permit authority has been delegated by the Secretary of the Army to the Chief of Engineers and his authorized representatives.

The basic form of authorization used by the Corps District is the individual permit. Processing of such permits involves evaluation of individual project specific applications. An alternate form of authorization is the General Permit. General permits are not usually developed for an individual applicant, but cover activities the Corps has determined to be substantially similar in nature and causing only minimal individual and

cumulative environmental impacts. Nationwide general permits are issued by the Chief of Engineers and are found at 33 CFR 330.

Waters of the United States at the Williams Center tract are comprised of approximately 19 acres of non-tidal wetlands adjacent to Youngs Branch and several meandering streams. These areas are shown in green on the plan. The entire William Center tract is outlined in black. Nationwide general permits associated with this site apply to road crossing fills, fills for utility lines and up to 10 acre fills in certain situations. The Nationwide Permits have conditions, one of which requires prior notification to the District Engineer if the activity within the Corps jurisdiction may adversely affect historic properties. Some work in these waters had already occurred but I had not been notified by the developers as required since the fills may affect historic properties. I issued the first cease and desist order and suspended the Nationwide Permits for fill in waters of the United States within this tract on June 22, 1988.

The Williams Center tract has been divided into two completely separate development entities. The Hazel/Peterson tract is shown as the clear area and the Equity Resources Property is highlighted in yellow. The violations on the Hazel/ Peterson property are shown in red and the violations on the Equity Resources property are shown in blue. On August 25, 1988 Hazel/ Peterson removed all fill from waters of the United States, thus

effectively removing the Corps involvement in any development activity at the site.

Minor fills in waters of the United States still exist on the Equity Resources site and have yet to be resolved. The violations on the Equity Resources property are shown in blue. I issued the second cease and desist order to Equity Resources on August 9, 1988. There are five areas of violation as a result of the emplacement of two storm sewer lines and three minor road crossings. The historic resources coordination is currently being initiated for these five sites. The coordination requires the developer to provide the Corps with sufficient information to make a determination as to the affect of the fill activity on historic properties. Once the determination is complete we are required to coordinate our findings with the State Historic Preservation Officer and the Advisory Council on Historic Preservation. Upon completion of this coordination, I will decide whether the fill activities qualify for a Nationwide Permit or require further review under the individual permit process. Currently, neither Hazel/Peterson nor Equity Resources have permit applications before us for consideration. However, if applications are received for definitive proposals, they will be evaluated and historic resources coordination will be conducted.

The impact of the total development on historical properties is unknown to the Norfolk District and is not a consideration in our review of the wetland fills at the site. It appears however that development of the uplands will continue to occur with or without fill activity in the wetlands. Out of the total 542 acre tract of land, only 19 acres, or 3 1/2 percent, are within the regulatory authority of the Corps. The entire upland development- the construction of the mall, the office complexes, the housing development- will occur with only minor, if any, involvement by the Corps. The Corps does not have the authority to stop construction on the uplands. I will now answer any questions that you may have.

MINORITY VIEWS OF SENATOR McCLURE

I am strongly opposed to the action taken by the Committee. In 1980, Congress enacted legislation which expanded the boundary of the Manassas National Park. That legislation was intended to set the final boundaries of that Park. Now we are being asked to renounce that finality. Congress simply cannot keep revisiting these boundary disputes if local governments and private property owners are to have any sense of certainty and predictability with respect to the legal status of their property. Such fluidity is bad from both a national park perspective and as a matter of federal-state relations. We ought not to encourage it through the precedent represented in this legislation.

The 600 acre William's Tract at Manassas, which is being legislatively taken by this Act, is not historically integral to the Battle of Manassas. Congress could have included this tract in the 1980 legislation at a cost of less than $10 million, but did not. Current cost estimates had been reported to run from $10 to $100 million prior to the Committee hearing. However, testimony was given that property values for nearby lands have been valued between $17.00 and $17.50 per square foot. At that figure, the 600 acres could reach $413 million.

The issue of just how much this acquisition will cost will not be known until well after enactment. The Committee has received sufficient information, however, to question even the limited figure of $60 million, the amount OMB has stated it will initially assign to this legislative taking. Prince William County has recently informed the Committee that it would expect to be compensated for the costs of relocating the existing 240 foot electric powerline easement which contains both a 500 KV and a 115 KV line on towers. The County will also insist on compensation for the contractual commitments which were part of the rezoning, which include $2 million in cash for an interchange and a recreational complex, as well as the dedication of land for a fire station and additional turn lanes at the Route 234/Route 29 intersection. The County also provided data on recent sales which indicate that between August, 1987 and May, 1988 the cost of land zoned for non-residential purposes increased from $2.71 per square foot to $7.66 per square foot in the area. Assuming a figure of $7.50 per square foot, the 393 acres zoned for non residential purposes will alone cost over $125 million.

Whether the larger acreage decreases the value, or the level of development increases it, remains to be seen. What is inescapable, however, is that this will not be an acquisition for spare change. If the amount is sufficient to put the fiscal year 1989 budget over the Budget Act requirements so as to trigger a $10 billion sequester, this will be the most expensive shopping mall federal agencies ever acquired.

Moreover, this tract is not the only undeveloped tract bordering Manassas. "Stony Ridge", the area where Jackson commanded his troops, on the North side of the Park is at least as important according to historians, as the area occupied by Longstreet, the area under consideration by H.R. 4526. Do we plan to revisit Stony Ridge during the next Congress once the cost for that tract escalates out of sight?

H.R. 4526 also does not resolve the issue of other development in the area around the Manassas Battlefield Park. Condemning William Center merely shifts the same controversy to other properties similarly adjacent to the existing Park. It is beyond comprehension to think we are willing or prepared to purchase all of the properties.

More importantly, there are undeveloped lands adjacent to many other parks which may or may not be higher on the priority list of the National Park Service. Acquiring the William Center tract now, ahead of other far more historically or environmentally important properties already on the existing acquisition list for the Nation, is unfair and makes the establishment of priorities for Park Service land acquisition by the Congress a meaningless exercise.

By this action, we are signaling other landowners at other sites that the way to obtain federal funds is to destroy, or threaten to destroy, resources which the federal government has authorized for acquisition but which have not filtered to the top of the annual appropriations process; or, as in the case of Manassas, resources which are not even within the boundaries of an established park.

It is unfortunate the Committee did not seriously consider alternatives. The developer of the William Center, Hazel-Peterson Companies, has already agreed to preserve the areas of historical importance on the William Center tract and to wholly eliminate any serious visual impact of the project on the Battlefield Park. The government's purchase of the William Center tract is, therefore, not necessary to insure preservation of the Park's integrity. I find Committee action on this legislative taking even more ludicrous when the developer intends to donate components of these "areas of historic importance" to the National Park Service for free.

According to the National Park Service the real "number one" threat to the Battlefield Park is the existing and ever increasing automobile traffic that transits the Park on State routes 29 and 234. Removing this traffic by closing the state roads and returning them to their Civil War gravel status is by far the most important element in preserving the integrity of the Park. The Park Service has a very reasonable plan to acocmplish this objective without the expense of "taking" the William Center tract.

It appears the Senate is really being requested to act as a "national" local zoning board. It is important for the Senate to understand that based upon the testimony of the September 8 Committee hearing, it is now clear that the shopping mall was at all times a use permitted by the "mixed use" zoning of the tract; that the County at all times wanted intensive commercial use of the tract; that the developer never represented that it would not include a shopping mall in its plans; and when the developer decided to adopt a mall in its plans it notified the County and the public in a

forthright and timely manner. Prior to the announcement of the "mall", there was little opposition to the development package involving the 600 acre tract. Simply put this is a local issue which should be resolved at local levels of government.

In conclusion, I believe the action recommended by the Committee is literally one which this nation cannot afford. The last legislative taking recommended by this Committee and approved by Congress occurred in 1978 when the Congress enacted a legislative taking to expand the boundaries of Redwoods National Park. The Committee had been informed that the cost of acquisition would be $349 million. That legislative taking was triggered by the actions by one timber company. While the final bills have not yet been paid, the total cost, including payments to date, now exceeds $1.4 billion.

The Appropriations Committee has the unenviable task of sorting through all the requests for funding from the Land and Water Conservation Fund. Nothing is more difficult than telling a colleague that he or she cannot be accommodated this year although we fully concur with the importance of the particular request. This year, there were over 1700 such requests. Apparently this Committee believes it knows better than the Appropriations Committee, and that the William's Tract is not only more important than the other requests the Appropriations Committee received, but also more important than the ones which the Senate and House did agree to fund when we approved the fiscal year 1989 Interior Appropriations measure. Those sites will suffer from the sequester we may tgrigger with this measure—the developer of the William's tract will not.

JAMES A. MCCLURE.

CHANGES IN EXISTING LAW

In compliance with paragraph 12 of Rule XXVI of the Standing Rules of the Senate, changes in existing law made by the Act, H.R. 4526, as ordered reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

ACT OF APRIL 17, 1954

AN ACT To preserve within Manassas National Battlefield Park, Virginia, the most important historic properties relating to the battles of Manassas, and for other purposes

That *(a)* there is established as a unit of the national park system in the Commonwealth of Virginia the Manassas National Battlefield Park, which shall contain within its boundaries the important historical lands relating to the two battles of Manassas. The total area of the park shall not be greater than four thousand five hundred and twenty-five acres. The boundaries of the park shall be the boundaries depicted on the map entitled "Boundary Map, Manassas National Battlefield Park", dated October 1980, and numbered 379/80,009, which shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior. The Secretary shall publish in the Federal Register, as soon as practicable after the date of the enactment of this Act, but no later than one year from the effective date of this section, a detailed description and map of the boundaries. Notwithstanding section 7(c) of the Land and Water Conservation Fund Act of 1965 (91 Stat. 211), as amended (16 U.S.C. 4601), the Secretary may not make any changes in the boundaries of the park. The Secretary shall administer the park in accordance with laws, rules, and regulations applicable to the national park system.

(b)(1) In addition to subsection (a), the boundaries of the park shall include the area, comprising approximately 600 acres, which is south of U.S. Route 29, north of Interstate Route 66, east of Route 705, and west of Route 622. Such area shall hereafter in this Act be referred to as the "Addition".

(2)(A) Notwithstanding any other provision of law, effective on the date of enactment of the Manassas National Battlefield Park Amendments of 1988, there is hereby vested in the United States all right, title, and interest in and to, and the right to immediate possession of, all the real property within the Addition.

(B) The United States shall pay just compension to the owners of any property taken pursuant to this paragraph and the full faith and credit of the United States is hereby pledged to the payment of any judgment entered against the United States with respect to taking of such property. Payment shall be in the amount of the

agreed negotiated value of such property or the valuation of such property awarded by judgment and shall be made from the permanent judgment appropriation established pursuant to 31 U.S.C. 1304. Such payment shall include interest on the value of such property which shall be compounded quarterly and computed at the rate applicable for the period involved, as determined by the Secretary of the Treasury on the basis of the current average market yield on outstanding marketable obligations of the United States of comparable maturities from the date of enactment of the Manassas National Battlefield Park Amendments of 1988 to the last day of the month preceding the date on which payment is made.

(C) In the absence of a negotiated settlement, or an action by the owner, within one year after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary may initiate a proceeding at any time seeking in a court of competent jurisdiction a determination of just compensation with respect to the taking of such property.

(3) Not later than 6 months after the date of enactment of the Manassas National Battlefield Park Amendments of 1988, the Secretary shall publish in the Federal Register a detailed description and map depicting the boundaries of the Addition. The map shall be on file and available for public inspection in the offices of the National Park Service, Department of the Interior.

(c) The Secretary shall not allow any unauthorized use of the Addition after the enactment of the Manassas National Battlefield Park Amendments of 1988, except that the Secretary may permit the orderly termination of all operations on the Addition and the removal of equipment, facilities, and personal property from the Addition.

SEC. 2. (a)*(1)* In order to effectuate the purposes of this Act, the Secretary is authorized to acquire by donation, purchase with donated or appropriated funds or exchange, any property or interests therein which are located within the boundaries of the park, except that property owned by the Commonwealth of Virginia or by any political subdivision thereof may be acquired only by donation.

(2) The Secretary shall cooperate with the Commonwealth of Virginia, the political subdivisions thereof, and other parties as designed by the Commonwealth or its political subdivisions in order to promote and achieve scenic preservation of views from within the park through zoning and such other means as the parties determine feasible.

* * * * * * *

○